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JAMES E. MITCHELL, GENERAL PARTNER

March 13, 2020

The Honorable Walter J. Clayton, III
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Release No. 34-87115; File No. S7-14-19

Dear Chairman Clayton,

I write to provide additional comments on the proposal (the "Proposal") by the Securities and Exchange Commission ("SEC" or "the Commission") to amend Rule 15c2-11 (the "Rule") under the Securities Exchange Act of 1934 ("Exchange Act").¹ This letter supplements earlier letters I submitted to the comment file, dated October 9, 2019² and October 11, 2019.³

As the SEC staff and Commissioners are aware, many of the comment letters received by the SEC in the comment file for the Proposal were written by actual investors in over-the-counter ("OTC") securities. A significant number of those letters correctly anticipate significant losses to innocent investors in legitimate OTC issuers that have operated profitably for decades but for a variety of non-fraudulent reasons choose not to publish current information.

In addition, some of the letters in the comment file have offered constructive alternatives that would allow the SEC to fulfill its objective of protecting investors from penny stock fraud, without simultaneously harming investors in legitimate issuers. See, for example, the letters from Virtu Financial⁴ and OTC Markets.⁵ Other letters have referenced empirical data demonstrating that whether or not a company is reporting current information is not a good

¹ Publication or Submission of Quotations Without Specified Information, Release No. 34-87115; File No. S7-14-19 (Sept. 25, 2019).

² Letter from James Mitchell (Oct. 9, 2019), available at <https://www.sec.gov/comments/s7-14-19/s71419-6298193-193434.pdf>.

³ Letter from James Mitchell (Oct. 11, 2019), available at <https://www.sec.gov/comments/s7-14-19/s71419-6299171-193437.pdf>.

⁴ Letter from Virtu Financial (Feb. 7, 2020), available at <https://www.sec.gov/comments/s7-14-19/s71419-6788704-208239.pdf>.

⁵ Letter from OTC Markets (Dec. 30, 2020), available at <https://www.sec.gov/comments/s7-14-19/s71419-6590623-202249.pdf>.

barometer of potential fraud – rather, the most relevant metric indicating fraudulent activity is high volume in low priced stocks. See, for example, the letter from Alexandra Elliott.⁶

I write today to supplement my earlier comments with three potential alternatives the SEC could undertake in a final rule to minimize losses to investors in legitimate OTC securities. The first is based on the comment letter from OTC Markets. The second and third are based on the research cited by the comment letter of Alexandra Elliot which identifies the source of the problem to be low priced stocks that trade in high volume.

Alternative A – The “Expert” Market

In its letter, OTC Markets proposed a regulatory construct that would provide for an “Expert Market.” In my view, this alternative would address the concerns articulated above and in my earlier letters, provided:

1. There is no limit as to what securities can be traded in this market (so that issuers cannot control trading in their own securities).
2. The definition of “expert” excludes investors the SEC seeks to protect, but is broad enough to allow sufficient trading to create a market. Therefore, it is suggested that “expert” include accredited investors, holders of an MBA, present and former CPAs, stockbrokers, CFAs, and registered investment advisors.
3. Existing shareholders are allowed to sell in this market, but only “experts” are allowed to buy.
4. The fees for a brokerage firm to enter a bid or offer are low enough that it makes sense for brokerage firms to enter an order even if the trading volume of the security is very low.
5. OTC Markets has suggested the “expert” market be limited to non-affiliate shareholders. This makes sense for officers, directors and actual controlling shareholders. It is a potential disaster for an over 10% shareholder who is presumed to be an affiliate but has no actual affiliation or control.

If someone becomes a 10% or greater holder in an SEC registered company, there is a procedure to be able to sell. If the “expert” market becomes the only market for a security, there needs to be a procedure for an over 10% holder with no actual affiliation with the Company to be able to sell.

Alternative B – The Grandfather Clause

Since statistics suggest the heart of the problem is “penny stocks” that attract high trading volume, it should be possible to exempt a lot of companies without decreasing the effectiveness of the rule change.

The suggested description of companies to be grandfathered are companies that: (1) have had no change in control in the past three years, (2) no change in their principle business activity

⁶ Letter from Alexandra Elliott (Oct. 10, 2020), available at <https://www.sec.gov/comments/s7-14-19/s71419-6283313-193328.pdf>.

in the past three years, and (3) as of the effective date of the new rule, the bid price per share is \$10.00 or higher.

Alternative C – A Narrower Focus

Since statistics suggest the heart of the problem is “penny stocks” that attract high trading volume, a more narrowly focused rule may be effective in accomplishing the goal with substantially less collateral damage.

An example of an alternative is as follows:

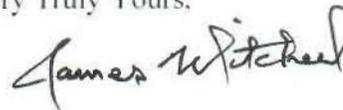
With respect to any security trading for \$10.00 or less, if the SEC notices a significant increase in price or trading volume, the SEC may ask the issuer and/or its market makers for their opinions as to the cause of the price or volume increase. If in the opinion of the SEC staff there is no satisfactory explanation, the SEC may suspend the “piggyback rule” for that security for a period of up to one year.

In addition, market makers should be required to disclose whether they are relying on their own information, information published by the issuer, information from a Qualified IDQS, or the piggyback rule. If every market maker is relying on the piggyback rule, the SEC can suspend use of the piggyback rule with regard to that security for up to one year.

* * *

Thank you for the opportunity to comment on the Proposal. Should you have any questions or wish to discuss the alternatives proposed above, I can be reached at 714-432-5300.

Very Truly Yours,



James E. Mitchell
General Partner

Cc: Allison H. Lee, Commissioner
Hester M. Peirce, Commissioner
Elad L. Roisman, Commissioner
Brett W. Redfearn, Director, Division of Trading and Markets